

Chapter 7 **Contract Management & Monitoring**

Chapter 7, Section 1

Introduction

7.1.1 **Key components of this chapter**

What this chapter will cover

RCW 41.06.142 (d) requires the agency to establish a contract monitoring process to measure contract performance, costs, service delivery quality, and other contract standards as criteria for contracting with individuals, non-profit organizations, businesses, EBU's, and other entities for services customarily and historically provided by state employees. The Office of Financial Management (OFM) has two guides that are excellent sources of more detailed information about managing personal or client service contracts (see <http://www.ofm.wa.gov/contracts.htm>).

The Performance Work Statement (PWS), Quality Assurance Plan (QAP) (see Chapter 2); and the contract terms and conditions will be the primary drivers in the management and monitoring of a contract. This chapter focuses on the period of time from commencement of work under contract through completion/termination.

This chapter is organized as follows:

- **The contract management team** - Roles and responsibilities
- **Verification (inspection), monitoring and accepting performance** - Performance to the PWS and QAP
- **Modifying the contract** - Change orders, price modifications, etc.
- **Dispute resolution** - Escalation paths and considerations, techniques, and tactics
- **Incentives and terminations** - Required by statute RCW 41.06.142 (1)(d) for agencies to cancel contracts that do not meet standards
- **Contract close out** - Renewals, extensions, and re-solicitations

7.1.2 **Brief review of PWS and QAP**

Again, the key deliverables from the business requirements effort are:

Performance Work Statement (PWS) - Definition from WAC 236-51-010 (20) “a statement of the technical, functional and performance characteristics or requirements of the work to be performed. The statement identifies essential services to be performed, determines performance factors, including the location of the work, the units of work, the quantity of work units, and the quality and timeliness of the work units.”

Quality Assurance Plan (QAP) - Definition from WAC 236-51-010 (22) “a plan by which an agency will monitor a contract awardee's performance to ensure that the standards of the performance work statement are met within the costs, quality of service, delivery, and other standards of the contract.”

The PWS and the QAP, which detail contract requirements, are the primary documents for contract management and monitoring. In addition, other contract documents are required by WAC 236-51-305, as follows:

- State standards as provided in WAC 236-51-210; and

- Terms and conditions, particularly:
 - Provisions requiring an entity other than an EBU to consider employment of state employees who may be displaced by the contract; and
 - Cancellation provisions for improper or failed performance.

Chapter 7, Section 2

The contract management team

Requirements when an EBU is awarded the contract

WAC 236-51-200(b) requires that an EBU, upon notifying the agency of its formation, designate a leader or leaders. The EBU is also required by WAC 236-51-220 to designate a point of contact for the competitive contracting process.

7.2.1 Agency: roles and responsibilities

Agency senior management

The ultimate responsibility for the performance of any contract rests with the agency director and his or her staff. It is therefore vital that an agency's senior management take continued interest in the performance of a service provider by doing the following:

- Review operational results and performance measures regularly
- Meet with and communicate with the service provider's senior management
- Make key decisions in a timely manner
- Communicate openly and honestly
- Delegate authority as required
- Maintain continued support and commitment
- Set a high standard for ethical behavior, data driven decision making, operational excellence, and results-based performance management

Contract administration function

The agency contract administration function has the responsibility to create and manage the agency's contract management and monitoring standard based on best practices. In addition, the agency contract administration function will also:

- Manage contract authorities and delegations as required
- Ensure that contracts reflect the state's standard terms and conditions
- Provide methods, processes, and training to enable effective service provider performance management
- Based on lessons learned, provide input on methods, processes, statute, and rules

Contract administrator

This individual is the key agency contact, and he or she will have tactical responsibility for the administration of the contract. Depending on the complexity of the service being contracted, this individual must have the skill sets, experience, and authority to manage and affect the following:

- Execute the authority delegated in writing by the agency to act on its behalf

- Monitor the service provider's performance and any customer complaints
- Identify changes, when needed, and process them via contract amendments
- Monitor and approve payment
- Conduct financial reviews and audits, if necessary, during the course of the contract
- Work with the service provider to resolve any problems that arise;
- Terminate the contract, if necessary, which includes determining breached performance or contractual provisions and documenting efforts to correct the breach or recommending termination to the appropriate authority
- Manage close-out of the contract
- Evaluate the results at the end of the contract and recommend actions such as: renewal, extensions, or re-solicitation.

Human resources (HR)

EBU members continue to be state employees and an EBU is an entity within the agency. As a result, HR will need to be involved in assisting EBU leaders, agency management, and contract administrators to manage the personnel needs of the EBU.

7.2.2 Contractor: roles and responsibilities

Senior management

The roles and responsibilities of the contractor's senior management and the agency's senior management are the same (see 7.2.1, paragraph 1).

Point of contact(s)

In general, a day-to-day point of contact(s) will need to be identified to support the tactical needs of the contract administrator.

Individual employees

The contractor is directly responsible for what their employees do and fail to do. Individual employees will need to understand the requirements of the work to be done, how to do it, and to recognize when it is done properly.

7.2.3 EBU: roles and responsibilities

EBU leader(s)

The EBU leader(s) represent the interest of the EBU members. The leader or a chosen delegate is responsible for the following:

1. Receive and submit notices (before and after award)
2. Conduct negotiations (including contractual changes)
3. Authority to contractually obligate the employee business unit (including contractual changes)
4. Seek clarifications and amendments to the contract
5. Represent the EBU in operational or performance reviews

EBU point of contact

The EBU leader(s) may delegate the responsibilities above to a member or member(s). The need to delegate is based on the day-to-day requirements and complexity of the service(s) being performed.

EBU members(s)

EBU members are state employees. They perform their duties and responsibilities as outlined in the contract between the EBU and the agency.

*Chapter 7, Section 3***Verification, monitoring, and accepting performance**

Guidance on developing a verification plan for incorporation into the QAP and PWS has already been covered in this manual (see 2.3.4). This section will discuss how verification plays a role in contract management and monitoring.

7.3.1 Verification and acceptance**Verification and acceptance as a condition for payment**

Verification and acceptance of a service typically form the basis for regular payments to a service provider. This gives the agency the needed leverage to compel a service provider to deliver the services as specified in the PWS. At the beginning of the contract period the agency may conduct frequent or 100% verification in order to “prove out” or “qualify” the service provider. As part of the QAP, the agency should also specify the plan to reduce or eliminate verification once the service provider has demonstrated capability. If the agency is required to maintain or increase verification due to a service provider’s performance, the agency should consider remedies, such as discounts, to compensate for the added costs.

Note: *Any provision, like the one outlined above, must be included in the contract if it is to be enforceable with the service provider.*

7.3.2 Monitoring**Surveillance and monitoring are critical**

Monitoring means any planned, ongoing, or periodic activity that measures and ensures a service provider’s compliance with the terms, conditions, and requirements of a contract. The purpose of monitoring is to ensure:

- The service provider is complying with the terms and conditions of the contract and applicable laws and regulations
- The service provider is delivering the quality of services specified in the contract
- The agency and the service provider are preventing non-compliance by identifying and resolving potential problems through constructive and timely feedback; and
- Progress is being made on schedule and within budget toward the expected results and outcomes.

As part of regular agency feedback, the service provider should be made aware of both non-conformances and any positive or negative trends detected in their performance. Negative

trends should be investigated for root cause as would any other non-conformance. Positive trends need to also be examined in order to repeat the success in other areas or confirm that progress towards achieving results is being made. *Figures 31 and 32* illustrate trend analysis using the example developed in 2.3.5. *Figure 30* shows the results of corrective action on each trend.

Service provider report card

A report card, or scorecard, is a useful tool for communicating contract performance. Graphs showing trends and reports on the status of pending corrective actions is also useful. *Figure 30* illustrates a scorecard based on the business requirements summary developed in 2.3.5.

Figure 30

Service Provider
Scorecard

Note: *In the examples provided, a corrective action process is also illustrated.*

| XYZ Fleet Management Service Provider Report Card for March 2006 | | | | | |
|------------------------------------------------------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Task, result or outcome | Performance Measure | Performance Standard | AQL | Performance for March '06 | Comments/Corrective Action |
| Level 1 Vehicle maintenance service | Vehicle availability | Average (12 mth. rolling) 82.5% vehicle availability (NAFA Standard). % of vehicles available to clients each Monday @ 8 a.m. | 82.5% minimal acceptable level | 79.30% | Corrective action XYZ #1: 3 vehicles involved in accidents and deadlined. XYZ Fleet and contract administration awaiting approval of modification to contract performance standard that does not count vehicles involved in accidents. Status: Pending Due Date: April 1 '06 Owner: Jane Smith: agency Contract Administrator |
| Task, result or outcome | Performance Measure | Performance Standard | AQL | Performance for March '06 | Comments/Corrective Action |
| Level 2 Preventative maintenance | Vehicle availability | Perform level 3 preventative maintenance within NAFA standard time allotted | See below | | |
| Level 3 Tune-ups | Time standard | NAFA Standard 1 hr. | +/- .1 hr. | 0.9 | |
| Level 3 Lube, oil & filter | Time standard | NAFA Standard .5 hr. | +/- .1 hr. | 0.6 | |
| Level 3 Safety inspections | Time standard | NAFA Standard .5 hr. | +/- .1 hr. | 0.5 | |
| Level 3 Emission testing | Time standard | NAFA Standard .25 hr. | +/- .1 hr. | 0.1 | Corrective action XYZ #2: Team reviewed standard and determined that it was established with older generation equipment. Contract is being modified to change the standard and re-target specification. XYZ's bid was based on their current times. No pricing change required. Status: Closed Days Open: 3 |

Vehicle availability

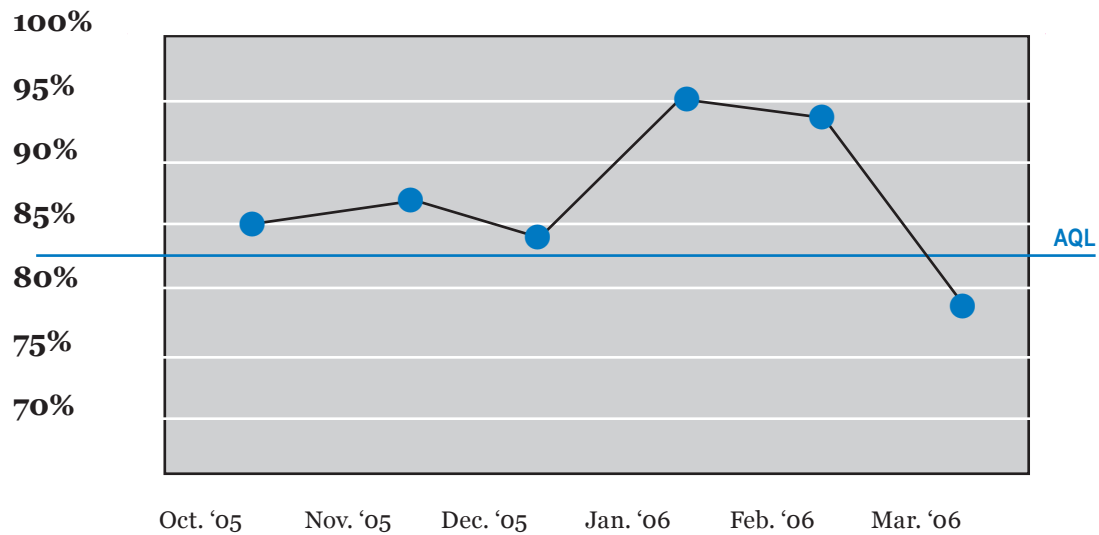


Figure 31

*Service Provider
Performance Trending:
Example*

Emission testing

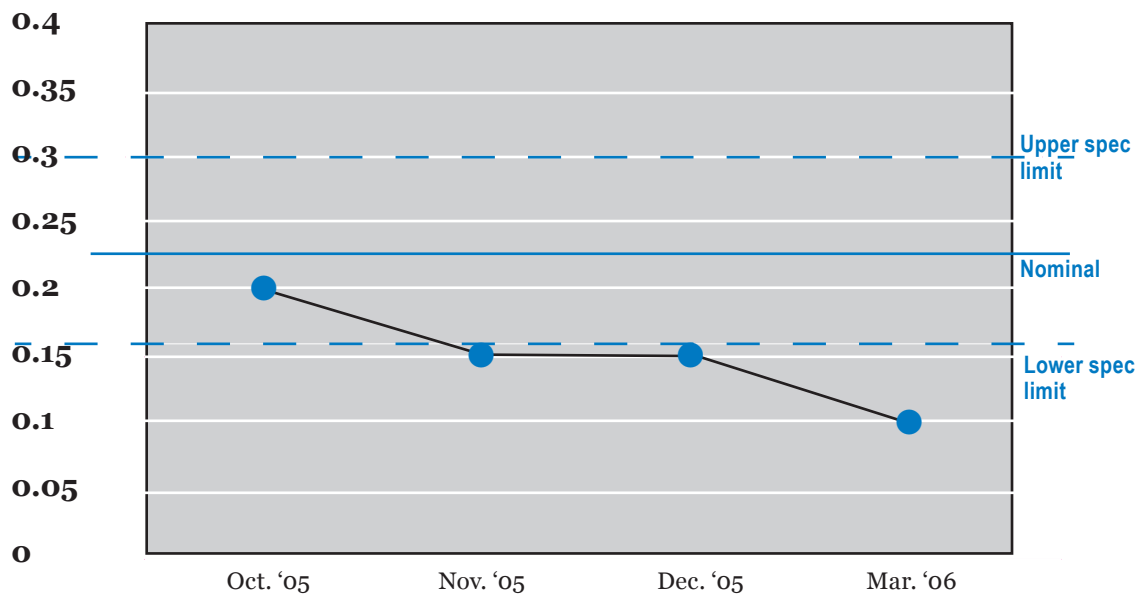


Figure 32

*Service Provider
Performance Trending:
Example*

Service provider business reviews

Regularly scheduled reviews of the state of the business between the service provider and the agency are crucial. These reviews may also be unscheduled if there are issues that need to be addressed due to failure to perform.

Chapter 7, Section 4

Modifying the contract

Ideally, the original contract would accurately anticipate and provide provisions for all possible situations that might occur as a contract is being performed. However, additional needs, changing conditions, unanticipated situations, and other factors may arise that necessitate a contract modification. Careful consideration of the nature of the modification and the terms and conditions of the original contract will determine the appropriate action to be taken to successfully execute a change to a contract.

7.4.1 Basis for modification

Bilateral

For most changes both the agency and the service provider will need to agree to any contract changes. These changes may involve modifications to the PWS or QAP, pricing, and/or schedule.

Unilateral

Unilateral changes are brought by a single party to the contract. These changes are invoked only when certain conditions, which are defined in the contract, occur.

7.4.2 Principle areas of contract changes

Performance Work Statement

This may include adding, modifying or deleting tasks, services or deliverables, or revising specifications. However, changes to the Performance Work Statement must stay within the general scope of the original contract.

Note: WAC 236-51-225 specifies that an EBU awarded a contract by an agency shall not perform or bid on solicitations for services not contained in its contract unless their agency approves it in writing.

Price

Changes to a contract price require the agreement of both parties. In amending a contract for IT goods and services, if the cost of the contract changes by more than the agency's delegated authority, ISB approval is required. Where possible, the original contract terms and conditions should allow for variability in pricing under certain conditions. Special care should be taken by the agency to ensure it understands what a service should cost to avoid "low-balling" of bids.

Note: "Low-balling" refers to the practice of submitting a bid proposal below a cost that is sustainable over the term of the contract with the sole intention of winning the solicitation and raising the price after award. This practice is considered unethical and serves to only reinforce the need that agencies understand the cost model of the service being solicited.

Period of performance

An agency must carefully consider what should be the appropriate period of performance (term) for a contract prior to issuing its solicitation. Examples of factors that may affect the period of performance for a contract:

- Cost and complexity of issuing a solicitation
- Level of start-up investment required of the service provider
- Operational disruption and risk

Regardless of the period of performance selected an agency should monitor contract end dates so as to allow enough lead-time for re-solicitation. This should minimize the need for changes or extensions to the contract term (see 7.7 for information on contract extensions).

Chapter 7, Section 5

Dispute resolution

Contract disputes are not in the best interest of either the agency or the service provider. An important goal of a contract management and monitoring process is to avoid such disputes.

7.5.1 Preventing disputes

Doing what you say and saying what you do

Predictability and consistency in applying the contract terms and conditions and the performance standards, along with focusing on results, is the best way to avoid disputes. If an agency is conducting verification monitoring and acceptance, and proactively working and closing the corrective action loop, then it also reduces the likelihood of conflict.

Sources of disputes include:

- Failure to produce or submit key deliverables
- Inferior quality of services
- Late payment issues
- Changing the standards or Performance Work Statement arbitrarily or without mutual agreement
- Customer complaints
- Significant audit or monitoring findings
- Failure to perform all or part of the contract
- Late performance
- Late submission of reports on a recurring basis

7.5.2 Resolving disputes

Getting to yes

It is in the best interest of everyone involved to work toward a mutually agreed upon resolution. In the case of EBU's, the agency can enlist Human Resources to facilitate resolution. Provisions for resolving conflicts informally should be part of any contract.

Chapter 7, Section 6

Incentives and terminations

7.6.1 Preliminary actions and corrective action

Terminating a contract should not be a surprise

Agencies should develop a closed loop corrective action process that addresses issues as they happen but before drastic action is necessary. The contract administrator's responsibilities regarding corrective action include the following:

- Communicate contract remedies, up to and including termination, as appropriate, when the service provider's performance is deficient
- Notify the service provider both verbally and in writing that a problem has been identified
- Notify the service provider of expectations for correcting the problem or, if appropriate, ask them for advice on how to correct the problem
- Specify a date or time when the agency expects the problem to be resolved or action will be taken
- Document conversations with the service provider by a memo to the contract file, and/or follow up with a written letter to the service provider
- Seek specialist advice, including legal counsel, when unsure of the rights of either party or the appropriate action required

7.6.2 Incentives

Chapter 2, Section 3 of this manual

Positive and negative incentives may be developed as part of a performance-based contract. In the case where the service provider is failing to perform to the contract requirements, the agency may invoke negative incentives or remedies.

7.6.3 Terminations

For default

A termination for default happens when a party is in "material breach" of one or more terms or conditions of the contract. An agency or other party to the contract may be able to claim damages as a result of a termination due to breach. Selecting properly qualified service providers along with writing a clear PWS and QAP are the main ways to avoid default.

For convenience

Termination for convenience happens when both parties have experienced significant change in the scope and expectations of the contract. Care should be taken to avoid clauses in contracts that allow a service provider to unilaterally terminate for convenience. Conversely, the state should always seek to retain its right to terminate for convenience.

For lack of funding

Included in any provision for termination, an agency will need to be able to terminate a contract with a service provider in the event that funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of the contract.

*Chapter 7, Section 7***Contract Close Out****EBUs and expiration-termination of a contract**

WAC 357-43 provides specific rules governing EBU member's status as a state employee upon contract termination or expiration.

7.7.1 Renewals/Extensions

Typically procurement documents and resulting contracts provide for an initial term, with options for limited renewals before a re-solicitation is required. The decision to renew a contract with a service provider may be based on a number of considerations, including the following:

- Performance by the service provider has met or exceeded expectations
- Recently enacted contract changes or investments in equipment have not fully yielded their expected returns
- Re-solicitation of the contract is not presently feasible
- At a later date the agency will be better placed to take advantage of an emerging market opportunity

Regardless of the reason, the renewal of a contract should be formally documented. Documentation should include the expected length of the extension or renewal.

7.7.2 Re-solicitations**How is a competitively contracted award re-bid?**

A service that was competitively contracted and subsequently awarded to a private service provider is re-solicited like any other purchased, personal or IT-related service. On the other hand, a service that was competitively contracted and subsequently awarded to an EBU is re-solicited via competitive contracting as described in RCW 41.06.142 and WAC 236-51.

Post contract review

Prior to re-solicitation the agency should conduct a review to determine what needs to be done better or what could be improved in the next contracting cycle.